

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

May 28, 2025

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

TRE J.,¹

Plaintiff,

v.

FRANK BISIGNANO, Commissioner of
Social Security,²

Defendant.

No. 4:24-cv-5140-EFS

**ORDER RULING ON CROSS
MOTIONS FOR REMAND AND
REMANDING FOR CALCULATION
OF BENEFITS**

Plaintiff Tre J. appeals the denial of benefits by the
Administrative Law Judge (ALJ). The parties agree the ALJ erred in

¹ To address privacy concerns, the Court refers to Plaintiff by first
name and last initial or as “Plaintiff.” *See* LCivR 5.2(c).

² Frank Bisignano was confirmed as the Commissioner of Social Security
on May 6, 2025. Pursuant to Federal Rule of Civil Procedure 25(d) and
42 U.S.C. § 405(g), he is hereby substituted as the Defendant.

1 his five-step evaluation, but the parties disagree about the appropriate
2 remedy. After reviewing the record and relevant authority, the Court
3 remands the case for calculation of benefits.

4 I. Background

5 Plaintiff alleges that he suffered a closed period of disability due
6 to a seizure disorder; a right knee meniscal tear, status-post surgery;
7 depression; anxiety; attention-deficit disorder (ADD); and impulse
8 control disorder. Due to his physical and mental impairments, Plaintiff
9 protectively filed for supplemental security income benefits on
10 September 3, 2018,³ alleging an onset date of April 23, 2015.⁴ Plaintiff's
11 claims were denied at the initial and reconsideration levels, and
12 Plaintiff requested an ALJ hearing.⁵ On July 27, 202, Plaintiff
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17 ³ AR 167-182.

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19 ⁴ Plaintiff's claim was later amended to one for a closed period of
20 disability from his application date of September 3, 2018, through April
21 3, 2021. AR 885.

22 ⁵ AR 104, 111, 115.

1 appeared with his attorney for a hearing before ALJ Stewart Stallings.⁶
2 At the hearing, Plaintiff amended his alleged onset date to coincide
3 with the application date of September 3, 2018.⁷ On October 13, 2020,
4 the ALJ issued an unfavorable decision, denying Plaintiff's claim.⁸
5 Plaintiff requested review, and the Appeals Council denied review.⁹
6 Plaintiff filed suit in this Court and, thereafter, this Court entered an
7 order remanding the case to the Commissioner for further
8 proceedings.¹⁰
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10 In 2024, Plaintiff appeared by telephone with his attorney for a
11 second hearing before ALJ Stallings.¹¹ On August 30, 2024, ALJ
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16 ⁶ AR 36-70.

17 ⁷ AR 40-41.

18 ⁸ AR 12-31.

19 ⁹ AR 1-6.

20 ¹⁰ AR 939-971, 972.

21 ¹¹ AR 881-912661-718.

1 Stallings issued a second unfavorable decision denying Plaintiff's
2 claim.¹² ALJ Stallings found:

- 3 • Step one: Plaintiff had engaged in substantial gainful
4 activity during the period of April 2021 to current, however,
5 there has been a continuous 12-month period during which
6 Plaintiff did not engage in substantial gainful activity.
- 7 • Step two: Plaintiff had the following medically determinable
8 severe impairments: seizure disorder; right knee meniscal
9 tear, status-post surgery; right shoulder instability, status-
10 post surgery; depressive disorder; anxiety disorder; ADD;
11 and impulse control disorder.
- 12 • Step three: Plaintiff did not have an impairment or
13 combination of impairments that met or medically equaled
14 the severity of one of the listed impairments. Specifically,
15 the ALJ noted that he considered Listings 1.18, 12.04,
16 12.06, 12.08, and 12.11.

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22 ¹² AR 858-880.

- RFC: Plaintiff had the RFC to perform light work except that:

[Plaintiff] can lift and carry up to twenty pounds occasionally and ten pounds frequently. [Plaintiff] can stand, walk, and sit for six hours out of an eight-hour workday. [Plaintiff] cannot climb ladders, ropes, or scaffolds, can occasionally climb ramps and stairs, stoop, crouch, kneel, and crawl. He should avoid exposure to moving, dangerous machinery and unprotected heights. [Plaintiff] is limited to simple, routine, repetitive tasks (reasoning level 1 and 2) with no production, conveyor-belt, or non-workercontrolled pace. [Plaintiff] needs a predictable work environment with occasional, simple workplace changes; occasional brief interaction with the public and co-workers; and occasional interaction with supervisors.

- Step four: Plaintiff has no past relevant work.
- Step five: considering Plaintiff's RFC, age, education, and work history, Plaintiff could perform work that existed in significant numbers in the national economy, such as a hand packager (DOT No. 559.687-074); a marker (DOT No. 209.587-034); and a cafeteria attendant (DOT 311.677-010).¹³

¹³ AR 864-874.

1 ALJ Stallings also considered the medical opinion evidence and
2 articulated the following as to his findings:

- 3 • The opinions of non-examining state agency consultants
4 Norman Staley, MD; Howard Platter, MD; and Christmas
5 Covell, PhD, were generally persuasive.
- 6 • The opinions of non-examining state agency consultant
7 Kent Reade, PhD, were generally persuasive but his opinion
8 regarding understanding, remembering, and carrying out
9 instructions is less persuasive.
- 10 • The opinions of Phillip Bernard, PhD, to be not persuasive.
- 11 • The opinions of Brian VanFossen, PhD, to be more
12 persuasive.
- 13 • The opinions of Doyle Miller, MD, and Thomas Westhusing,
14 DO, to be partially persuasive.
- 15 • The opinions of medical expert James Haynes, MD, were
16 consistent with neurology notes.¹⁴

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¹⁴ AR 870-873.

1 Plaintiff now appeals ALJ Stallings' denial of disability and asks
2 for an immediate award of benefits.¹⁵ The Commissioner concedes the
3 ALJ erred when evaluating the medical expert opinions, but the
4 Commissioner asks the Court to remand the matter for further
5 administrative proceedings because there are evidentiary conflicts that
6 must be resolved by the ALJ.¹⁶

8 II. Analysis

9 A. Remand Standard

10 When a harmful error occurs in the administrative proceeding,
11 remand for further administrative proceedings is the usual course
12 absent rare circumstances.¹⁷ Three factors must be satisfied for the
13 court to consider remand for payment of benefits:
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15 (1) the record has been fully developed and further
16 administrative proceedings would serve no useful purpose;

17 ¹⁵ ECF Nos. 1, 8.

18 ¹⁶ ECF No. 14.

19 ¹⁷ *Treichler v. Comm'r of Social Sec. Admin.*, 775 F.3d 1090, 1099 (9th
20 Cir. 2014) (quoting *Fla. Power & Light Co. v. Lorion*, 470 U.S. 729, 744
21 (1985)).
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(2) the ALJ has failed to provide legally sufficient reasons for rejecting evidence, whether claimant testimony or medical opinion; and (3) if the improperly discredited evidence were credited as true, the ALJ would be required to find the claimant disabled on remand.¹⁸

When these factors are satisfied, the decision whether to remand for benefits or further proceedings is within the court's discretion, as it "is a fact-bound determination that arises in an infinite variety of contexts."¹⁹

B. Remand Analysis – Medical Opinion Evidence

The parties agree the second factor is satisfied: the ALJ erred in evaluating the medical opinion evidence. Specifically, the parties agree that the ALJ erred in his consideration of the opinions of Dr. Reade.

1. Legal Standard

The ALJ must consider and articulate how persuasive he found each medical opinion and prior administrative medical finding, including whether the medical opinion or finding was consistent with

¹⁹ *Treichler*, 775 F.3d at 1100 (quoting *Harman v. Apfel*, 211 F.3d 1172, 1177 (9th Cir. 2000)).

1 and supported by the record.²⁰ The factors for evaluating the
2 persuasiveness of medical opinions include, but are not limited to,
3 supportability, consistency, relationship with the claimant, and
4 specialization.²¹ Supportability and consistency are the most important
5 factors.²² When considering the ALJ's findings, the Court is
6 constrained to the reasons and supporting explanation offered by the
7 ALJ.²³

9 The regulations define these two required factors as follows:

10 (1) Supportability. The more relevant the objective medical
11 evidence and supporting explanations presented by a
12 medical source are to support his or her medical opinion(s)
13 or prior administrative medical finding(s), the more
14 persuasive the medical opinions or prior administrative
15 medical finding(s) will be.

16 (2) Consistency. The more consistent a medical opinion(s) or
17 prior administrative medical finding(s) is with the evidence
18 from other medical sources and nonmedical sources in the

19 ²⁰ 20 C.F.R. § 416.920c(a)–(c); *Woods v. Kijakazi*, 32 F.4th 785, 792 (9th
20 Cir. 2022).

21 ²¹ 20 C.F.R. § 416.920c(c)(1)–(5).

22 ²² *Id.* § 416.920c(b)(2).

23 ²³ *See Burrell v. Colvin*, 775 F.3d 1133, 1138 (9th Cir. 2014).

1 claim, the more persuasive the medical opinion(s) or prior
2 administrative medical finding(s) will be.²⁴

3 The case was remanded by this Court with the directive that the
4 ALJ properly evaluate the opinions of Dr. Reade.²⁵ The Court noted:

5 In June 2019, Dr. Reade assessed Plaintiff's mental RFC. As
6 relevant here, when called upon to "[e]xplain in narrative
7 form the presence and degree of specific understanding and
8 memory capacities and/or limitations," Dr. Reade opined
9 that Plaintiff retains the capacity to "understand and
10 remember simple 1–3 step instructions" but "would not be
11 able to consistently understand and remember instructions
12 that are more detailed than this." Yet, in explaining
13 Plaintiff's "sustained concentration and persistence
14 capacities and/or limitations," Dr. Reade wrote that Plaintiff
15 retains the capacity to "carry out simple 1–2 step
16 instructions" but "would not be able to carry out tasks that
17 are more detailed than this on a consistent and regular
18 basis." Dr. Reade did not explain why Plaintiff would be
19 unable to "carry out" the last step of a 3-step task despite
20 being able to "understand and remember" all three steps.²⁶

21 It went on to state further:

22 As relevant here, the ALJ found "generally persuasive" Dr.
23 Reade's opinions that Plaintiff "retained the capacity to
understand and remember simple one-to-three step
instructions; carryout and maintain concentration,
persistence, and pace for up to two hours; complete a

24 20 C.F.R. § 416.920c(c)(1)–(2).

25 AR 939-971.

26 AR 948-949 (internal footnotes omitted).

1 normal workweek; could interact with others on a
2 superficial and occasional basis; and would be able to adapt
3 to normal, routine changes.” The ALJ did not address Dr.
4 Reade’s opinion limiting Plaintiff to “simple 1–2 step
5 instructions.” Rather, without articulating whether such
6 tasks could include instructions with one, two, or some
7 other number of steps, the ALJ went on to find Plaintiff
8 limited to “simple, routine, repetitive tasks.”²⁷

9 The Court found this error consequential, noting:

10 Presented with the limitation to simple and repetitive tasks,
11 the vocational expert testified that work existed in the
12 national economy which Plaintiff could perform, including
13 the jobs of router, collator operator, and routing clerk. The
14 vocational expert explained that, due to the simple-task
15 limitation, he had excluded positions for which the
16 Dictionary of Occupational Titles (DOT) indicates a
17 reasoning ability of Level 3 or higher is required. When
18 asked by the ALJ, the vocational expert further explained
19 that simple, repetitive work included only those jobs with
20 reasoning at Level 1 or 2. And, according to the DOT, each
21 of the three jobs identified by the vocational expert require
22 reasoning Level 2. Plaintiff argues that—at Level 2—all the
23 identified jobs require too high of a reasoning level. Per
Plaintiff, if Dr. Reade’s opined 1-to-2-step-task limitation is
incorporated into the RFC, he is limited to work that
involves reasoning no higher than Level 1.²⁸

27 AR 949.

28 AR 950-951.

1 In its prior order the Court directed that on remand the ALJ was
2 to specifically address the portion of Dr. Reade's opinion limiting
3 Plaintiff to tasks involving only 1-to-2-step directions, explaining either
4 how the limitation was incorporated into the RFC or why that portion
5 of his opinion was rejected.²⁹
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7 2. The ALJ's Findings

8 The ALJ articulated the following reasoning as to his
9 consideration of Dr. Reade's opinions:
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22 ²⁹ AR 969.
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1 Christmas Covell, Ph.D., and Kent Reade, Ph.D., State
2 agency consultants, opined that the claimant retained the
3 capacity to understand and remember simple one-to-three
4 step instructions; carryout and maintain concentration,
5 persistence, and pace for up to two hours; complete a
6 normal workweek; could interact with others on a
7 superficial and occasional basis; and would be able to adapt
8 to normal, routine changes (1A, 3A). These opinions are
9 found to be generally persuasive, as they are supported by
10 explanations and generally consistent with the overall
11 evidence. A provider characterized the claimant's mental
12 health symptoms as mild to moderate in severity (5F/7). The
13 claimant reported feeling happy with better communication
14 with his relatives (7F/34). Examinations noted the claimant
15 had regular speech that was coherent and spontaneous,
16 normal rate of thought process, some anxious themes in
17 thought content but still coherent and concrete thought
18 associations, no suicidal or homicidal ideations, no
19 psychosis, fair attention and concentration, grossly intact
20 recent and remote memory, fair, judgment, fair insight, and
21 fair fund of knowledge (7F/21, 24, 27, 33, 37, 47, 55, 62, 65,
22 69, 72, 76; 12F/8, 11, 14, 19, 22, 28, 36, 39, 42, 47, 50).
23 Moreover, psychiatric examination findings from medical

visits also noted the claimant had normal behavior, normal thought content, and normal judgment (10F/5; 11F/13, 34, 38, 42, 54, 62; 13F/4). Outpatient progress notes also show that the claimant discussed spending time with his family and girlfriend, working on not getting upset over small things, and improving in managing his anger (12F/4). The claimant also discussed feeling less depressed, getting along with family, and that home life was going well (12F/6). However, Dr. Reade's opinion on understanding, remembering, and carrying out instructions is less persuasive because of the discrepancy in his opinion between understanding and remembering one to three-step instructions and carrying out one to two-step instructions. Dr. Reade provided no explanation for the discrepancy. Rather, the overall evidence supports finding the claimant is limited to simple, routine, and repetitive tasks.³⁰

3. The Parties' Arguments

The parties agree that the ALJ erred in failing to consider a closed period of disability, in his consideration of Plaintiff's subjective testimony, and in his consideration of the medical opinion of Dr. Reade. Plaintiff argues that the case should be remanded for an award of benefits. The Commissioner argues that:

"The touchstone for an award of benefits is the existence of a disability, not the agency's legal error." *Brown-Hunter v. Colvin*, 798 F.3d at 757-58. While it is clear that Plaintiff has limitations, it is not clear that these limitations preclude Plaintiff from performing all work. Thus, the Court

³⁰ AR 870-871.

1 should remand the case to allow the factfinder to determine
2 if Plaintiff can perform work.³¹

3 Specifically, regarding the ALJ's consideration of Dr. Reade's
4 opinions, the Commissioner argued:

5 The ALJ found the opinion generally persuasive, but noted
6 a discrepancy in the number of steps Plaintiff could
7 understand and remember versus carry out. Tr. 871. Dr.
8 Reade found the claimant could understand and remember
9 up to three steps, but that he could only carry out or execute
10 or perform up to two steps. Tr. 96-98. The ALJ pointed out
11 that Dr. Reade failed to explain the discrepancy with the
12 number of steps Plaintiff could understand and remember
13 when compared to the steps he could carry out. Tr. 871. The
14 ALJ also stated that the restrictions beyond what was
15 included in the mental residual functional capacity were
16 inconsistent with the overall evidence. Tr. 871. Looking to
17 the decision as a whole, the ALJ highlighted that mental
18 status examinations were largely unremarkable and
19 Plaintiff's own admissions about life going well. Tr. 869
20 citing 719, 722, 725, 731, 735, 745, 753, 760, 763, 767, 770,
21 774, 855, 1204, 1225, 1229, 1233, 1245, 1253, 1876, 1878,
22 1881, 1884, 1889, 1892, 1898, 1906, 1909, 1912, 1917, 1920,
23 1925. Resolution of the conflict between Dr. Reade's opinion
and this other evidence in the record is the responsibility of
the ALJ, not this Court.³²

21 ³¹ ECF No. 14, pg. 10.

22 ³² ECF No. 14, pg. 8-9.

1 4. Analysis

2 This Court remanded the case to the Commissioner with the
3 direction that the ALJ specifically include the 1-2 step limitation
4 opined by Dr. Reade in the RFC or articulate his reasoning as to why it
5 was rejected.³³ The Court explained in its prior decision that a
6 limitation to performing only 1-2 step tasks is inconsistent with a job
7 having a reasoning level of more than 1.³⁴
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9 On remand, the ALJ simply stated that there was an
10 inconsistency between Dr. Reade's limitation to understanding and
11 remembering 2-3 step tasks and performing 1-2 step tasks which
12 Dr. Reade did not explain.³⁵ The ALJ did not properly articulate any
13 consideration of the consistency factor.
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15 The Commissioner's argument that the ALJ stated elsewhere in
16 the opinion that Plaintiff's mental status examinations were largely
17 unremarkable is unavailing. In each of the treatment records cited by
18 the ALJ, it was admitted by the ALJ that the records reflected only
19 "fair" concentration and attention, insight and judgement.³⁶ Neither
20 the ALJ nor the Commissioner has offered any reasoning as to how
21 those findings are inconsistent with Dr. Reade's opined limitation.
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1 This Court’s remand order made clear that there was an
2 inconsistency in Dr. Reade’s opined limitation between understanding
3 and remembering 1-3 step tasks and performing 1-2 step tasks. The
4 case was remanded with the direction that the ALJ was to develop the
5 record as needed. An ALJ may discount an opinion due to vagueness if
6 the opinion is not supported by examination findings.³⁷ However, if the
7 opinion is supported by examination findings, then the ALJ has a duty
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11 ³³ AR. 969.

12 ³⁴ AR 950-951.

13 ³⁵ AR 951.

14 ³⁶ *Id.*

15 ³⁷ *See Meanel v. Apfel*, 172 F.3d 1111, 1113–14 (9th Cir. 1999)

16 (determining that the doctor’s opinion that the claimant would have
17 “some” diminution in her concentration skills was conclusory and was
18 not supported by relevant medical documentation); *Johnson v. Shalala*,
19 60 F.3d 1428, 1432–33 (9th Cir. 1995) (determining that the doctor’s
20 conclusory opinion was not substantiated by relevant medical
21 evidence).
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1 to develop the record to clarify any consequential ambiguities either
2 contained in or caused by the opinion before discounting it for
3 vagueness.³⁸

4 “The ALJ always has a special duty to fully and fairly develop the
5 record” to make a fair determination as to disability, even where, as
6 here, “the claimant is represented by counsel.”³⁹ This “affirmative
7 responsibility to develop the record” is necessary to ensure that the
8 ALJ’s decision is based on substantial evidence.⁴⁰

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10 The ALJ called a neurologist to testify as a medical expert as to
11 Plaintiff’s seizure disorder.⁴¹ Notably, he did not call a psychologist to
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14 ³⁸ 20 C.F.R. § 404.1512.(e); *Tonapetyan v. Halter*, 242 F.3d 1144, 1150
15 (9th Cir. 2001) (“Ambiguous evidence, or the ALJ’s own finding that
16 the record is inadequate to allow for proper evaluation of the evidence,
17 triggers the ALJ’s duty to ‘conduct an appropriate inquiry.’”) (quoting
18 *Smolen v. Chater*, 80 F.3d 1273, 1288 (9th Cir. 1996)).

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20 ³⁹ *Celaya v. Halter*, 332 F.3d 1177, 1183 (9th Cir. 2003) (cleaned up).

21 ⁴⁰ *Id.* at 1184.

22 ⁴¹ AR 889-895.

1 testify to Plaintiff's mental disorders, nor is there any evidence in the
2 record that the ALJ requested clarification from Dr. Reade, a state
3 agency evaluator under contract to the Administration.

4 When questioned, the medical expert testified that Plaintiff's
5 seizures were not psychogenic and were documented seizures.⁴² When
6 asked about time off task due to seizures, the medical expert testified
7 that Plaintiff's grand mal seizures were debilitating but rare, and that
8 Plaintiff's "minor seizures" or "complex partial seizures" were more
9 frequent and would be expected to limit his ability to concentrate,
10 focus, and "get his bearings straight" for 1-3 hours.⁴³

11 While testimony from a psychologist might have further clarified
12 Plaintiff's limitations in concentration, there is nothing in the medical
13 record or the medical expert's testimony that is inconsistent with
14 Dr. Reade's opinion that Plaintiff would be limited to performing 1-2
15 step instructions, particularly in periods following complex partial
16 seizures.
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21 ⁴² AR 891.

22 ⁴³ AR 892-895.
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1 The Commissioner fails to offer any specific issue or conflict in
2 the record that must be reconciled or reason why Dr. Reade's opined
3 limitation to performing 1-2 step tasks should not be credited. Rather,
4 the Commissioner offers a vague and non-specific argument that the
5 medical evidence shows that Plaintiff might not be disabled.
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7 The Commissioner's argument that the ALJ cited elsewhere in
8 the record to largely normal mental status findings is vague, and as
9 noted above, is also flawed because the cited records indicate that
10 Plaintiff's ability to concentrate and persist was fair at best and offer
11 no evidence of inconsistency between Dr. Reade's opinion and the
12 record. Moreover, it was the testimony of the medical expert that
13 during the closed period in question Plaintiff suffered from documented
14 grand mal seizures and complex partial seizures, which affected his
15 ability to concentrate and persist for a period afterward.
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17 Based on the record before it, particularly considering that the
18 claim before the Court is one for a closed period of disability, the Court
19 concludes that remanding the case for further development of the
20 record would serve no useful purpose. The ALJ declined on remand to
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1 seek clarification from Dr. Reade of his opinions and the medical record
2 is closed for any other purpose.

3 The ALJ's failure to include Dr. Reade's opined 1-2 step
4 limitation in performing tasks was consequential. As explained in the
5 Court's prior order, a limitation to performing 1-2 step tasks is
6 consistent with a reasoning level of no more than 1. When given the
7 ALJ's formulated RFC, the vocational expert was only able to identify
8 one single job at a reasoning level of 1 and then later retracted that job
9 to be replaced with a third job at reasoning level of 2.⁴⁴ Therefore, the
10 VE testimony indicates that if Dr. Reade's opined limitation is properly
11 credited there are no jobs with a reasoning level of 1 that would fit the
12 ALJ's formulated RFC.
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15 Accordingly, the Court remands for calculation of benefits.
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22 ⁴⁴ AR 907-908.
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1 **C. Plaintiff's Subjective Claims: this issue is moot.**

2 The parties also agree that the ALJ erred in discounting
3 Plaintiff's complaints in part on the basis that he had worked after
4 April 2021, because Plaintiff averred that his condition improved after
5 April 2021 and amended his claim to one for a closed period of
6 disability ending on April 3, 2021. Because the Court has found cause
7 to remand this claim for a calculation of benefits, it finds this issue
8 moot.
9

10 **III. Conclusion**

11 Remand for an award of benefits is appropriate. This record is
12 well-developed, and both the medical expert testimony and vocational
13 expert testimony support a conclusion that Plaintiff should be found
14 disabled for the closed period in question. Given the fact that the claim
15 is one for a closed period and the medical record is closed, there is no
16 useful purpose in remanding for furthering proceedings.⁴⁵
17

18 Accordingly, **IT IS HEREBY ORDERED:**
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22 ⁴⁵ See *Vasquez v. Astrue*, 572 F.3d 586, 593–94 (9th Cir. 2009).
23

1 1. Plaintiff's Motion for Remand for Calculation of Benefits,
2 **ECF No. 8**, is **GRANTED**.

3 2. The Commissioner's Motion for Remand for Further
4 Proceedings, **ECF No. 14**, is **DENIED**.

5 3. The Clerk's Office shall enter **JUDGMENT** in favor of
6 Plaintiff REVERSING and REMANDING the matter to the
7 Commissioner of Social Security for immediate calculation
8 and award of benefits from his application date of
9 September 3, 2018, to April 3, 2021, the date on which his
10 condition improved to allow work.
11

12 4. The case shall be **CLOSED**.

13 IT IS SO ORDERED. The Clerk's Office is directed to file this
14 order and provide copies to all counsel.
15

16 **DATED** this 28th day of April 2025.

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18 _____
19 EDWARD F. SHEA
20 Senior United States District Judge
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